



THE ATTORNEY GENERAL OF TEXAS

GROVER SELLERS
~~OSWELL WILSON~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Bayne Satterfield
Firemen's Pension Commissioner
Austin, Texas

Dear Sir:

Opinion No. O-7082

Re: Whether the widow of a fireman who was fifty-four years of age, having served twenty two years and three months in a Texas fire department, and who died on May 20, 1942, of a heart attack, is entitled to benefits, and whether the same should be paid retroactively from the date of the husband's death.

Your letter of February 5, 1946, addressed to the Attorney General and requesting an opinion of this department, recites the following facts:

"We have an instance where a fireman had served for twenty-two years and three months in a Texas fire department and on May 20, 1942 he died of an heart attack. He was fifty-four years of age at the time of his death. Assuming that his heart attack was not in consequence of the performance of his duty as a fireman and in view of the fact that he had served more than twenty years but had not reached the age of fifty-five and the further fact that he died prior to the enactment of the amendment to Section 6 of the Act and in the light of your Opinions #O-6521, #O-6583, is his widow entitled to her benefits from the Act and should the benefits be retroactive to the date of her husband's death?"

Section 6 of Article 6243e, Revised Civil Statutes, in part provides:

"On and after the 1st day of April, A. D. 1939, any person who has been duly appointed and enrolled, and who has attained the age of fifty-five (55) years and who has served actively for a period of twenty (20) years in some regularly organized fire department in any city or town in this State now within or that may come within the provisions of this Act, in any rank,

whether as wholly paid, part paid or volunteer firemen shall be entitled to be retired from such service or department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city or town, a monthly pension....."

Sec. 12 of the foregoing statute, in part provides:

"If any member of any department, as herein defined, who has been retired on allowance because of length of service or disability, shall thereafter die from any cause whatsoever; or shall die from any cause whatsoever after he has become entitled to an allowance or pension certificate and shall leave surviving a widow, . . . said Board of Trustees shall order paid a monthly allowance as follows:"

Sec. 14 of the above statute provides that any fireman possessing the qualifications and being eligible for voluntary retirement may apply to the Board of Trustees for such certificate.

In our Opinion No. O-5878 addressed to you, approved March 8, 1944, it was pointed out that the third class of members mentioned in Sec. 12 above required death "after" the fireman has become entitled to an allowance or pension certificate. Under the facts herein presented, however, the fireman died May 20, 1942, at the age of fifty-four years and apparently without making any application to the Board of Trustees for any retirement certificate. Furthermore, to be qualified under the Act, such fireman must have reached the age of fifty-five years, in addition to having served actively for a period of twenty years, to become entitled to be retired from such service or entitled to a certificate.

The amendment of Sec. 6 of the Statute, considered in our Opinions Nos. O-6521 and O-6583, and to which you refer, became effective September 5, 1945, and such amendment does not have a retroactive effect as to deceased members who failed to possess the statutory qualifications at the time of their death.

You are respectfully advised that under the facts submitted your questions are answered in the negative.

Yours very truly,

WmK:LJ:wc

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APPROVED MARCH 6, 1946

s/Grover Sellers
ATTORNEY GENERAL OF TEXAS

By s/Wm. J. R. King
Wm. J. R. King
Assistant

Approved Opinion Committee
By BWB Chairman